



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33947609

Date: NOV. 26, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a digital influencer, seeks classification as an individual of extraordinary ability in the arts. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner meets the classification's initial evidentiary requirements. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner

to submit comparable material if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

In the underlying petition, the Petitioner claimed to qualify under seven of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x):

- (i) Receipt of lesser nationally or internationally recognized prizes or awards;
- (ii) Membership in associations which require outstanding achievements of their members;
- (iii) Published material about the Petitioner in professional or major media;
- (v) Making artistic contributions of major significance to the field;
- (vii) Display of the Petitioner's work at artistic exhibitions or showcases;
- (viii) Performing in a lead or critical role for organizations or establishments with distinguished reputations; and
- (x) Commercial success in the performing arts.

The Director concluded that the evidence only satisfied the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), and denied the petition accordingly. On appeal, the Petitioner provides a personal statement and documentation from her YouTube channel. Upon review, she has not established eligibility for the reasons below.

A. Receipt of Lesser Nationally or Internationally Recognized Prizes or Awards for Excellence in the Field. 8 C.F.R. § 204.5(h)(3)(i).

To qualify for this criterion, the Petitioner submitted materials concerning the Silver level Award, the TikTok award, and the YouTube award for having 100,000 subscribers.¹ The Director concluded that the record did not establish that any of these awards were recognized beyond the rewarding entities. On appeal, the Petitioner states that "[t]hese awards are internationally and nationally recognized and relevant in the field." Upon review, the Petitioner has not provided sufficient evidence to support her claims.

¹ We note that the only requirements for the YouTube award are being an actively posting channel with 100,000 subscribers and complying with various YouTube policies. As such, the record does not indicate that this is an award for excellence, as required at 8 C.F.R. § 204.5(h)(3)(i).

When considering whether an award is nationally or internationally recognized as reflecting excellence in a person's field, we assess factors such as the criteria used to grant the awards, the significance of these awards in the person's field, the number of awardees, and limitations on competitors. *See generally* 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policy-manual>.

Here, the record indicates that the winners of the [REDACTED] Award are determined through a poll of the readers of the *Brazilian Times*, a regional U.S. publication for the Brazilian-American community. While this award is arguably in the Petitioner's field, since it was granted for her work as a social media influencer, there is no indication that it is nationally or internationally recognized. The only articles the Petitioner submitted regarding this award are from the *Brazilian Times*, the award's co-sponsor, and from the Petitioner's hometown newspaper in Brazil. The record therefore does not establish that the [REDACTED] Award is recognized beyond a local or regional level in the United States or Brazil. Similarly, the only documentation provided regarding the Petitioner's TikTok award is the award itself, and there is no evidence establishing the national or international significance of this award in her field.

The record does not indicate that the Petitioner's awards are recognized on a national or international level as reflecting excellence in her field. She therefore has not established eligibility under the criterion at 8 C.F.R. § 204.5(h)(3)(i).

B. Membership in Associations in the Field Which Require Outstanding Achievements of Their Members, as Judged by Recognized National or International Experts. 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner seeks to qualify for this criterion on the basis of her membership in the YouTube Shorts creators' community. The Director concluded that the evidence provided did not establish her membership in an association or that any such association required outstanding achievements of its members.² On appeal, the Petitioner mentions this criterion but does not specify any legal or factual error in the Director's conclusions.

The record indicates that membership in the YouTube Shorts creators' community only requires a person to be an active creator of short videos and compliant with YouTube policies. While the community is invitation-only, there is no indication that the invitations are issued by nationally or internationally recognized experts in the Petitioner's field, or that they are only issued to creators with outstanding achievements. The Petitioner has not established eligibility under the membership criterion.

C. Published Material about the Petitioner in Professional or Major Trade Publications or Other Major Media. 8 C.F.R. § 204.5(h)(3)(iii).

The Director concluded that the Petitioner submitted evidence satisfying this criterion. However, upon review, we will withdraw this finding, because the record does not establish that any of the publications

² We note that the Director stated that the "submitted evidence does not show the petitioner is or was a member of any professional association" (emphasis added). There is no requirement at 8 C.F.R. § 204.5(h)(3)(ii) that a qualifying association be professional in nature; it only has to be an association in the person's field of endeavor. However, since the Petitioner has not otherwise established eligibility for this criterion, the error is, at most, harmless. *See generally* *Matter of O-R-E-*, 28 I&N Dec. 330, 350 n.5 (BIA 2021) (citing cases regarding non-material errors).

which published articles about or interviews with the Petitioner are professional or major trade publications or other major media.

The documentation regarding the *Brazilian Times* newspaper states that it has two regional editions in the eastern United States, each with a circulation of 16,000 copies. However, the record does not contain evidence indicating that this is a relatively large circulation or showing that the *Brazilian Times* is regarded as a major publication. Similarly, the newspaper [REDACTED] is a local newspaper from the Petitioner's hometown with a printed circulation of 4,500 copies and 17,200 website views per edition. While a nominally local newspaper may be considered major media, the record here does not establish that [REDACTED] has a relatively large circulation, is nationally prominent in Brazil, or is otherwise a major media outlet. Finally, the television channel TV Horizonte is described as "the biggest Catholic TV Channel in the state of Minas Gerais, Brazil," where the Petitioner's hometown is located. This does not establish whether TV Horizonte has high viewership in comparison to secular television channels in Minas Gerais or in Brazil as a whole.

The evidence provided does not establish that any of the published material about the Petitioner comes from professional or major trade publications or other major media. The Petitioner has not established eligibility under 8 C.F.R. § 204.5(h)(3)(iii).

D. Original Artistic Contributions of Major Significance in the Field. 8 C.F.R. § 204.5(h)(3)(v).

The Director concluded that the recommendation letters provided to establish eligibility under this criterion did not establish how the Petitioner's work majorly influenced her field. On appeal, the Petitioner states that her "petition provided extensive evidence of [her] achievements and contributions to the field," and names the other evidentiary criteria she is seeking to qualify under. She further claims that her high follower and view counts on YouTube and TikTok establish that her "original contributions are substantial and impactful, with hundreds of videos that went viral."

Firstly, the Petitioner has not qualified under any of the other evidentiary criteria at 8 C.F.R. § 204.5(h)(3). Secondly, she has provided no legal support for the claim that qualifying under one of the other criteria constitutes proof of an original contribution of major significance to the field. Since this interpretation of the regulation would nullify the original contributions criterion and contradict the requirement that petitioners provide evidence meeting at least three of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we decline to adopt it.

Finally, popularity is not synonymous with originality or significance. While the Petitioner's videos have been viewed millions of times, the record does not include documentation showing how this has affected the field of social media influencing. There is no documentation indicating that other influencers have adopted the Petitioner's methods or otherwise been affected by her work. The record also does not explain which of the Petitioner's contributions is considered original or why. She therefore has not demonstrated eligibility under this criterion.

E. Display of the Petitioner's Work in the Field at Artistic Exhibitions or Showcases. 8 C.F.R. § 204.5(h)(3)(vii).

To qualify under this criterion, the Petitioner submitted evidence of a [REDACTED] billboard display, as well as an exhibition in the [REDACTED] an organization that seeks to memorialize the history of Brazilian immigrants in the United States. The Director concluded that these displays did not occur at artistic exhibitions or showcases. On appeal, the Petitioner contends that since her work is artistic, the exhibitions were artistic as well, and that she has therefore established her qualifications under this criterion. However, the record does not support this conclusion.

First, the regulation requires a display of the Petitioner's work product. *See generally* 6 USCIS Policy Manual, *supra*, at F.3(B)(1). Both the billboard and the display in the [REDACTED] only showed the Petitioner's photograph and accompanying explanatory text, rather than her videos. Therefore, they are not displays of the Petitioner's work product in her field.

Furthermore, the Petitioner has not overcome the Director's conclusion that these exhibitions were not artistic in nature. A billboard is an advertising medium: while art may be displayed on it, that does not make it an artistic exhibition or showcase. The documentation regarding the [REDACTED] indicates that it is a collection of plaques showing the photographs of various notable Brazilian Americans, as well as explanatory text about their work. This is a community history and information display, not a display of art. The Petitioner has not established eligibility under this criterion.

F. Performing in a Lead or Critical Role for Organizations or Establishments with Distinguished Reputations. 8 C.F.R. § 204.5(h)(3)(viii).

While the Petitioner mentions this criterion on appeal, she does not specify what establishment or organization she has performed a lead or critical role for or indicate what factual or legal errors the Director made regarding this criterion. We therefore will not address the issue further. *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (declining to address a "passing reference" to an argument in a brief that did not provide legal support).

G. Commercial Success in the Performing Arts. 8 C.F.R. § 204.5(h)(3)(x).

The Director concluded that the Petitioner cannot qualify under this criterion because she does not work in the performing arts. However, the record indicates that her YouTube and TikTok videos consist of sketches which she acts in. Because acting is a performing art, we will withdraw the Director's conclusion that the Petitioner cannot qualify under this criterion.

However, upon examination of the record, the evidence provided is insufficient to establish that the Petitioner has had commercial success as contemplated by the regulation. We acknowledge that the Petitioner has a high number of TikTok followers and a popular YouTube channel. However, the regulation specifies "commercial" success – that is, success leading to financial profits – and calls for evidence such as box office receipts and record sales to demonstrate eligibility. Here, that evidence has not been provided.

The Petitioner has submitted documentation indicating that her YouTube videos are monetized, and in her response to the Director's request for evidence (RFE), she also provided information from an analytics website estimating that she could be paid \$1,852 to \$2,910 per TikTok post, based on statistics such as her follower count and engagement levels. However, the website printout prominently states that "[t]his is only an estimation and can vary greatly by niche, country, [and] audience location." The Petitioner also states on appeal that "videos with such high view counts are monetized, generating significant revenue through advertising and sponsorship" and that her "ability to monetize these viral videos . . . translates into tangible financial success." However, she has not provided any documentation of her actual revenues from advertising, sponsorships, or monetization, and so has not established her level of commercial success.

Finally, while the Petitioner's work may have the potential to be highly profitable in the future, all petitioners must establish eligibility for the requested benefit at the time they file the benefit request. 8 C.F.R. § 103.2(b)(1). The Petitioner's potential future commercial success therefore cannot establish eligibility under this criterion.

III. CONCLUSION

Because the Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3), she has not demonstrated her eligibility as an individual of extraordinary ability. The petition will remain denied.

ORDER: The appeal is dismissed.